

**DEPARTMENT OF HOMELAND SECURITY
BOARD FOR CORRECTION OF MILITARY RECORDS**

Application for the Correction of
the Coast Guard Record of:

BCMR Docket No. 2010-040

**XXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXX**

FINAL DECISION

This is a proceeding under the provisions of section 1552 of title 10 and section 425 of title 14 of the United States Code. The Chair docketed the case after receiving the applicant's completed application on November 23, 2009, and assigned it to staff member J. Andrews to prepare the decision for the Board as required by 33 C.F.R. § 52.61(c).

This final decision, dated August 26, 2010, is approved and signed by the three duly appointed members who were designated to serve as the Board in this case.

APPLICANT'S REQUEST AND ALLEGATIONS

The applicant asked the Board to correct his record so that he may be credited with the correct number of Reserve retirement points.¹ He stated that the Coast Guard recently completed a Statement of Creditable Service (SOCS) for him and that there are several discrepancies between the SOCS and his paper records. In support of his allegation, the applicant submitted an email he received from a Human Resources Assistant (Military) at the Pay and Personnel Center, who stated that he found the following discrepancies between JUMPS (the Coast Guard's pay database) and documents in the applicant's record:

08 DEC 1994 – Member signed MARTP agreement that specifically states member was a USCG Reservist with a 08 year obligation. This would set the DIEMS [Date of Initial Entry to Military Service] date.

24 APR 1995 – DD-4 and SEG 57 has member entering the USCGR as HEZ [an enlisted member of the Selected Reserve (SELRES)] but 1st IDT/ADT [drills or active duty training] according to SEG 01 was not performed until 21 OCT 1995 which would be the member's Initial Pay Base Date. The period between 24 APR 1995 and 20 OCT 1995 would not be creditable toward AD [active duty] or PEBD [pay entry base date].

¹ Reservists are required to earn at least 50 points in each "anniversary year" of their service for that year to count as a satisfactory year for retirement purposes. 10 U.S.C. § 12732.

14 AUG 1998 – Member executed Oath of Office as a reserve ENS/01 but SEG 57 does not have member entering FOB [Reserve commissioned officer on extended active duty] status until 01 NOV 1998.

16 JUN 2003 – Member executed Oath of Office as an active duty LT/O3 but SEG 57 does not have member entering AOZ [regular active duty commissioned officer] status until 10 JUL 2003.

Current Reserve AY [anniversary year/date] (11/07) is correct. For years 1995 – 2006 member's AY should have been 12/08 vs. 04/24 and may need correction.

The applicant stated that in December 1994, he applied to the Reserve through the Maritime Academy Reserve Training Program (MARTP) by signing, *inter alia*, a Statement of Understanding and a Record of Military Processing. Then on April 24, 1995, he enlisted in the active Reserve as an E-3 under the MARTP. The applicant stated that he did not receive any pay or allowances from the Coast Guard until he attended Reserve Enlisted Basic Indoctrination (REBI) from August 14 to 25, 1995. He submitted his REBI certificate dated August 25, 1995.

On October 21, 1995, the applicant stated, he began his first Inactive Duty Training (IDT) by performing weekend drills. For the next three years, he drilled as a reservist at the Marine Safety Office in Galveston. However, he alleged, many periods of active duty training (ADT) and IDT that he performed from 1995 to 1998 are missing from his record. However, on April 24, 1998, he received the Reserve Good Conduct Medal for three years of satisfactory service. He alleged that his receipt of this medal is proof that he completed all of the ADT and IDT requirements from 1995 to 1998.

The applicant alleged that on August 15, 1998, he was appointed an ensign in the Reserve and began serving on an extended active duty contract. In support of this allegation, the applicant submitted a copy of his first active duty officer evaluation report (OER), which shows that he reported for duty and the reporting period began on August 15, 1998, and ended on March 31, 1999. The report shows that a total of 38 days were “not observed,” including 6 leave days and 32 other days. The applicant stated that the 32 “other” days show time he spent at the Coast Guard training center in Yorktown attending trainings such as a Port Operations Department Course and Marine Safety Information System training. His DD 214 dated June 15, 2006, shows that he attended courses entitled “Seaport Security/Antiterrorism” and “MS Information Systems OPS/MGT” for one week in December 1998 and a 4-week course called “Port Operations Department COU” in February 1999.

The applicant stated that he served on active duty continuously thereafter until 2006. During that period, he was promoted to lieutenant on October 29, 2002, and on June 16, 2003, he integrated from the Reserve to the regular, active duty Coast Guard as a lieutenant.

On May 15, 2006, the applicant stated, he resigned his commission and received an Honorable Discharge. On November 7, 2006, he enlisted in the Reserve again. The six-month break in service was caused by “the unique paperwork challenges of re-enlisting after being an officer; an event that rarely occurs.” He has continued to drill and perform short periods of active duty as a reservist and has advanced to chief petty officer.

SUMMARY OF THE RECORD

On December 8, 1994, the applicant and his recruiter signed a "Statement of Understanding: Coast Guard MARTP Program" (SOU). The first paragraph of the SOU states that it "will become an Annex to the Enlistment/Reenlistment Document: Armed Forces of the United States (DD-4)." The applicant acknowledged the following in the SOU:

1. ... I am enlisting in the Coast Guard Reserve and that I am incurring a military service obligation of eight (8) years.

2. I am a high school graduate and currently enrolled in Texas A&M Galveston. I am scheduled to complete Reserve Enlisted Basic Indoctrination (REBI) on 25 AUG 95 in commence for the Fall Semester on 28 AUG 95. I certify that I intend to continue my education and that my education prohibits my enlistment in a program that requires 30 consecutive weeks of Initial Active Duty for Training.

3. I will be required to participate satisfactorily in the Selected Reserve for six (6) years

...

4. I will be assigned to a Coast Guard Reserve Unit (CGRU) upon release for REBI. While completing my bachelor's degree, I will perform drills at a Marine Safety Office and be ineligible for promotion. ... Satisfactory participation includes ... [c]ompetent performance in at least 48 scheduled drills and at least twelve (12) days Active Duty for Training (ADT) each year from the date of my enlistment. If authorized by the district commander, I may complete not less than 30 days ADT each year as a substitute for the 48 drills and 12 days ADT.

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8. I understand that successful completion of all MARTP training participation and pre-commissioning requirements, and graduation from an approved Maritime Academy will result in my commissioning as ensign (O-1) United States Coast Guard Reserve. ...

9. I understand that one of the benefits of MARTP is eligibility for concurrent participation in the Student Incentive Payment (SIP) program offered by the Maritime Administration. I understand that if I participate in the SIP program and voluntarily resign from Texas A&M I may be subjected to involuntary active duty not to exceed two (2) years.

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13. This statement of understanding is a part of my Enlistment Contract. Any and all promises have been made to me in writing and are included in this contract.

On December 13, 1994, the applicant and his recruiter signed a "Record of Military Processing" with his personal data. Block 20 shows that he was enlisting on April 24, 1995, and that his pay entry date and active duty service date would be April 24, 1995.

On April 24, 1995, the applicant enlisted in the Coast Guard Reserve. The enlistment contract lists the MARTP SOU as an annex to the contract.

On August 25, 1995, the applicant received a certificate for completing the REBI Maritime Academy Reserve Training Program course at the Coast Guard training center in Cape May, New Jersey.

On April 24, 1998, the CO of the Marine Safety Unit in Galveston awarded the applicant a Reserve Good Conduct Medal.

On August 15, 1998, the applicant signed an Acceptance and Oath of Office to accept an appointment as an ensign in the Reserve.

On March 18, 2002, the applicant signed an extended active duty contract requiring him to serve on active duty from that date through June 30, 2003.

A drill point statement dated July 25, 2002, in the applicant's record shows that in his anniversary year ending on April 23, 1996, he earned 19 drill points, 15 membership points, and no points for ADT. It shows that he earned 12 points for ADT in AY 1997, 36 points for ADT in AY 1998, and more than 50 points in every year from AY 1997 through AY 2002.

On June 16, 2003, the applicant signed an Acceptance and Oath of Office to accept an appointment to lieutenant in the regular active duty Coast Guard.

On May 15, 2006, the applicant was issued a DD 214 discharge certificate indicating that he had been on continuous active duty since April 24, 1995 (blocks 12.a. and 12.b.), and had no prior active service or inactive service (blocks 12.d. and 12.e.). This DD 214 lists as one of his awards a "First CG Reserve Good Conduct Medal for period ending 99 04 24" and shows that he completed, *inter alia*, a MARTP course in August 1997 and a marine science petty officer course in December 1998.

On November 7, 2006, the applicant enlisted in the Reserve for six years as a first class petty officer (MST1/E-6). A Record of Military Processing prepared upon this enlistment shows his active duty service date and his pay entry date as October 15, 1995.

On October 10, 2008, the applicant was issued a DD 214 covering 20 days of active duty he had completed since September 21, 2008, pursuant to a Reserve mobilization for Hurricane Ike. The DD 214 states erroneously in block 2, however, that he was a member of the regular Coast Guard, but block 13 properly shows that he received a "First Coast Guard Reserve Good Conduct medal for period ending 980424." It shows in blocks 12.d. and 12.e. that he had completed 7 years, 10 months, and 28 days of prior active service and 4 years, 1 month, and 19 days of prior inactive service.

On July 7, 2009, the Pay and Personnel Center prepared a Statement of Creditable Service for the applicant, which shows the following:

- The date his military obligation was incurred is December 8, 1994.
- His adjusted pay base date is April 12, 1996.
- His adjusted active duty base date is November 16, 2000.
- From December 8, 1994, to April 23, 1995, he was an enlisted member of the Individual Ready Reserve (IRR).
- From April 24 to October 20, 1995, he was a non-drilling enlisted member in the SELRES.
- From October 21, 1995, to May 19, 1996, he was a drilling enlisted member of the SELRES.
- From May 20 to 31, 1996, he completed 12 days of ADT.
- From June 1, 1996, to August 1, 1997, he was a drilling enlisted member of the SELRES.
- From August 2 to 15, 1997, he completed 14 days of ADT.
- From August 16 to December 25, 1997, he was a drilling enlisted member of the SELRES.
- From December 26, 1997, to January 16, 1998, he performed 22 days of ADT.
- From January 17 to August 14, 1998, he was a drilling enlisted member of the SELRES.

- From August 15 to 23, 1998, he was a drilling officer in the SELRES.
- From August 24, 1998, to June 15, 2003, he was a Reserve officer on extended active duty.
- From June 16, 2003, until his discharge on May 15, 2006, he was a regular active duty officer but also in the Reserve.
- From November 7, 2006, to April 7, 2007, he was a drilling enlisted member of the SELRES.
- From April 8 to 20, 2007, he completed 13 days of ADT.
- From April 21, 2007, to March 2, 2008, he was a drilling enlisted member of the SELRES.
- From March 3 to 14, 2008, he completed 12 days of ADT.
- From March 15 to September 20, 2008, he was a drilling enlisted member of the SELRES.
- From September 21 to October 10, 2008, he was mobilized onto active duty for 20 days.
- From October 11, 2008, to April 30, 2009, he was a drilling enlisted member of the SELRES.

VIEWS OF THE COAST GUARD

On April 15, 2010, the Judge Advocate General (JAG) of the Coast Guard submitted an advisory opinion in which he adopted the findings and analysis of the case in a memorandum by the Personnel Service Center (PSC) and recommended that the Board grant relief. The PSC stated that relief should be granted because the five discrepancies listed in the email from the PPC have been reviewed and approved by the Reserve Personnel Management branch.

APPLICANT'S RESPONSE TO THE VIEWS OF THE COAST GUARD

On April 26, 2010, the Chair sent the applicant a copy of the JAG's advisory opinion and invited him to respond within 30 days. No response was received. However, in response to inquiries from the BCMR staff in August 2010, the applicant submitted copies of his original enlistment contract and other documents that were not in the record forwarded by the JAG.

APPLICABLE LAWS

The MARTP was in effect prior to the issuance of the Reserve Policy Manual (RPM) in 1997 but is not mentioned in the 1995 Reserve Administration and Training Manual (RATMAN). However, paragraphs 7.J.5.a.(4) and (5) of the 1995 Marine Safety Manual stated that MARTP participants were students at maritime academies and colleges who enlisted in the Reserve in the "RN" training program and could receive a direct commission as an officer after three years of training in the marine safety field. Chapter 15-H-9 of the RATMAN stated that "[p]ersonnel enlisting in the RQ/RN program who do not have prior Coast Guard service must complete the Reserve Enlisted Basic Indoctrination (REBI) course during their first year of enlistment." Under COMDTINST 1131.23, MARTP participants were eligible for direct commissions in the Reserve upon graduating from a maritime college and acquiring a merchant mariner's license to be a Third Mate, Third Assistant Engineer, or higher rank.

Chapter 15-H-4 of the 1994 RATMAN provides that prior service members who possess skills that will qualify them for immediate advancement to E-4 are in the "RX" program and "do not attend IADT; instead, they shall be ordered home awaiting orders until a quota has been obtained to the Reserve Enlisted Basic Indoctrination Course (REBI). After they successfully complete REBI, they are to report to their assigned Reserve units."

Chapter 5.E.1. of the 1997 RPM stated that the MARTP was designed to recruit students at approved maritime colleges, including the one at Texas A&M in Galveston. Chapter 5.E.2. is a flow chart showing that the first step in the program is for a student at a maritime college to meet with a recruiter and prepare a package, which is reviewed by a MARTP selection panel. If the student is selected for the program, the recruiter is notified to enlist the student in the Reserve. The student attends REBI as his first period of ADT and is then assigned to a Marine Safety Office (MSO) to drill for a year. After the student drills for a second year, the student completes a Coast Guard MARTP course. Upon graduating from the maritime academy, the member receives a commission and is assigned to serve on active duty at an MSO. The 1997 and current RPMs categorize MARTP participants as “RM,” rather than “RN.”

Chapters 2.A.3. and 2.A.4. of the RPM state that reservists earn 1 point for each 4-hour drill attended and 2 points for two or more 4-hour drills attended in one calendar day. Chapter 8.C.3.a.2. states that reservists receive 1 point for each day of active duty they perform.

According to Article 12.C.16.a.5. of the Personnel Manual, a member’s DIEMS is “the earliest date they joined a Uniformed Service either through the Delayed Entry Program, a Service academy, their enlistment, induction or appointment. Service Academy cadets and persons in the Delayed Entry Program are considered ‘members of the Uniformed Service’ while they serve in such status.” Chapter 7.D. of the Pay and Personnel Procedures Manual states that DIEMS is “the date someone first became a member of a Uniformed Service and pertains to the earliest date of enlistment, induction, or appointment in a regular or reserve component of an armed force as a commissioned officer, warrant officer, or enlisted member. Breaks in service shall not affect the date someone first became a member. Cadets and midshipmen of the Academies, cadets of the Reserve Officer Training Corps, and members of the Delayed Entry Program (DEP) are considered to have become members for the purposes of these provisions.”

Enclosure (1-1) to the RATMAN defines “anniversary year” for those who enter the Reserve after June 30, 1949, as extending “from the date of entry or reentry to the day preceding the anniversary of entry or reentry.” Appendix A of the 1997 RPM defines “anniversary date” as “the date the member entered into active service or into active status in a Reserve component.” Under Chapter 1.C. of the RPM, all members of the SELRES and the IRR are in an active status.

Chapter 2.A. of the Pay Manual, COMDTINST M7220.29B, states that creditable service for pay purposes includes “all periods of active duty inactive service ... in any Regular or Reserve component.” However, Chapter 2.B.4.a. states that since January 1, 1985, “time served as a member of a Reserve component under a delayed entry program prior to entry or active duty or ADT” is not creditable for pay purposes. A “delayed entry program” is one in which the recruit enlists in the Reserve but does not immediately begin his initial active duty training period. 10 U.S.C. § 513.

Chapter 5.A.3.a.(8) of the Medals and Awards Manual states that to receive a Reserve Good Conduct Medal between January 1, 1980, and June 3, 1997, a reservist was required to have accumulated three consecutive anniversary years of good conduct in which the member performed 12 days of ADT and 90% of 48 scheduled IDT drills (90% of 48 = 43). To receive

the medal between June 4, 1997, and October 24, 2002, a reservist was required to have accumulated three consecutive anniversary years of good conduct in which the reservist earned at least 50 retirement points per year. Chapter 5.A.3.a.(2) states that “[m]embers whose good conduct period of service spans years with disparate eligibility standards must apply the standard in place at the beginning of their anniversary year. Creditable time earned under a previous good conduct standard will be combined with creditable time earned under the new standard during the same period of service.”

Chapter 1.A. of COMDTINST M1900.4D, the manual for preparing DD 214s, states that DD 214s are issued “to members who change their military status among active duty, reserve, or retired components or are separated/discharged from the Coast Guard to civilian status.” Chapter 1.B.10. states that to warrant preparation of a DD 214 for a reservist, the reservist must have served on continuous active duty for at least 90 days.

Chapter 1.D.2.a. of COMDTINST M1900.4D states that “[a]ll entries [on the DD 214], unless specified otherwise (i.e., blocks 7a, 7b), are for the current period of active duty only from date of entry as shown in block 12a through the date of separation as shown in block 12b. Chapter 1.E. of COMDTINST M1900.4D provides the following instructions for completing block 12:

Block 12a. Date Entered Active Duty This Period. Enter the date of entry on active duty.

Block 12b. Separation Date This Period. Enter the effective date of release/discharge. For personnel being retired, enter the last day of active duty in this block and enter the effective date of retirement in block 18, Remarks. ...

Block 12c. Net Active Service This Period. Enter the years, months, and days of service creditable for basic pay purposes for the period from date entered active duty this period (block 12a) through date of separation (block 12b). ...

Block 12d. Total Prior Active Service. Enter the years, months, and days of service creditable for basic pay for all active service prior to the date entered in block 12a. ...

Block 12e. Total Prior Inactive Service. Enter the years, months, and days of service creditable for basic pay for inactive service completed prior to the date entered in block 12a. Active Duty Training computation must be subtracted from the total prior inactive service computation, since the ADT computation is cited as part of block 12d.

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Block 12h. Effective Date of Pay Grade. Enter the year, month, and day as follows:

1. Enlisted Personnel. Date of advancement.
2. Officers. Date of rank, as distinguished from the date of appointment.

FINDINGS AND CONCLUSIONS

The Board makes the following findings and conclusions on the basis of the applicant's military record and submissions, the Coast Guard's submissions, and applicable law:

1. The Board has jurisdiction concerning this matter pursuant to 10 U.S.C. § 1552. The application was timely because it was filed within three years of when the applicant knew or should have known of the errors in his record.

2. The applicant alleged that various dates marking changes in his status are erroneous in his record and that he is not being credited with the correct number of Reserve retirement points. The Board begins its analysis in every case by presuming that the disputed information in the applicant's military record is correct as it appears in his record, and the applicant bears the burden of proving by a preponderance of the evidence that the disputed information is erroneous or unjust.² This applicant's record, however, contains so many obvious and significant errors and inconsistencies that the question before the Board is not whether there are errors, but how to clean up his record.

3. The applicant's SOCS shows that he was in the IRR from December 8, 1994, to April 23, 1995. This entry was apparently made because of the MARTP SOU dated December 8, 1994. However, the text of the SOU shows that it was premised on the applicant enlisting in the Reserve, and the applicant did not actually enlist until April 24, 1995. Therefore, he cannot have been a member of any branch of the Reserve prior to that date. The MARTP SOU was an annex to the applicant's April 24, 1995, enlistment contract and had no force or effect until the applicant actually enlisted. As the rules for the MARTP in the 1997 RPM show, students attending maritime colleges who wanted to become Coast Guard officers had to complete application packages, which were reviewed by a MARTP selection panel before the recruiter was notified that he could enlist the student. The MARTP SOU and the Record of Military Processing dated December 13, 1994, were parts of the applicant's MARTP application package and did not actually obligate him or the Coast Guard in any way prior to his enlistment. Therefore, the applicant's SOCS should be revised to show no service prior to April 24, 1995.

4. The PPC alleged that December 8, 1994, should be the applicant's DIEMS because of the MARTP SOU. However, the applicant enlisted on April 24, 1995, and there is no evidence that he was ever a cadet at a Service academy or in the Reserve Officer Training Corps (ROTC), and he had not enlisted prior to April 24, 1995, under a delayed entry program.³ Therefore, given the definitions of DIEMS in Article 12.C.16.a.5. of the Personnel Manual and Chapter 7.D. of the Pay and Personnel Procedures Manual, the Board finds that the applicant's DIEMS is the day he first enlisted, April 24, 1995.

5. The PPC alleged that December 8th should be the applicant's Reserve anniversary date from 1995 through 2006 because of the MARTP SOU dated December 8, 1994. However, the 1995 RATMAN defines an "anniversary year" as extending "from the date of entry or reentry to the day preceding the anniversary of entry or reentry" and the 1997 RPM states that a reservist's anniversary date is "the date the member entered into active service or into active status in a Reserve component." Therefore, the Board finds that the applicant's anniversary date prior to his June 16, 2003, integration into the regular Coast Guard was the date he first enlisted in the Reserve, April 24, 1995.

6. The applicant enlisted in the Reserve on April 24, 1995, and under the SOU agreed to serve at least the first 6 years of his 8-year military service obligation in the SELRES.

² 33 C.F.R. § 52.24(b).

³ Under a "delayed entry program," the recruit, often a student, enlists in the Reserve while still in school or otherwise occupied and begins active service when he is available to serve on active duty or active duty for training.

However, he stated that he performed no IDT or ADT until he attended REBI in August 1995. His REBI certificate is dated August 25, 1995, and he stated that the course began on August 14, 1995. Chapter 15-H-9 of the 1995 RATMAN and Chapter 5-E-2 of the 1997 RPM stated that MARTP participants were to attend REBI during their first year and that attendance at REBI would fulfill their 12-day ADT requirement for the first year. Therefore, the applicant's SOCS should show that he became a member of the SELRES on April 24, 1995, and that he performed 12 days of ADT from August 14 to 25, 1995.

7. According to the PPC email, the applicant's pay entry base date is unclear. Under Chapter 2.A. of the Pay Manual, all of the applicant's regular and Reserve service was creditable time for pay purposes unless he spent "time served as a member of a Reserve component under a delayed entry program prior to entry on active duty or ADT." The applicant stated that he cannot recall performing any type of duty or receiving any pay or allowances until he began REBI and that he believes he began REBI on August 14, 1995. However, it is not clear to the Board that he was enlisted under a delayed entry program; his enlistment contract shows that his pay entry base date was April 24, 1995; and the SOU indicates that upon enlistment he would immediately be a member of the SELRES. Therefore, the Board finds that the preponderance of the evidence shows that the applicant's initial pay entry base date, prior to his break in service in 2006, should have been April 24, 1995.

8. The applicant alleged that he is not being credited with the correct number of retirement points for ADT and IDT from 1995 through the beginning of his extended active duty in 1998. As evidence of his satisfactory participation, he noted that his commanding officer awarded him a Reserve Good Conduct Medal for his first three years of service from April 24, 1995, through April 23, 1998. Receipt of this medal normally requires the reservist to have performed 12 days of ADT and at least 43 of 48 scheduled drills during each of the three anniversary years.⁴ However, according to the applicant and the SOCS, he did not begin drilling until November 21, 1995. Therefore, it is unlikely that he performed 43 drills before the end of his first anniversary year on April 23, 1996. Moreover, a drill point statement in his record shows that in his first anniversary year, he received 19 drill points and 15 membership points for a total of 34 points. Neither the drill point statement nor the SOCS properly credit the applicant with 12 days of REBI/ADT during his first anniversary year, although both show that he performed the required 12-day ADT periods in 1996 and 1997. Adding 12 points for the applicant's attendance at REBI to his first anniversary year gives him a total of 46 points for the year, which does not meet the 50-point requirement for a satisfactory year for retirement purposes.⁵ It is possible that the applicant performed drills or completed correspondence courses in AY 1996 for which he has not been credited, but he has not yet submitted sufficient evidence to prove that he did so or that he is otherwise entitled to more than 46 points for AY 1996. Therefore, the Board finds that the preponderance of the evidence shows that the applicant earned satisfactory years of service for retirement purposes in AY 1997 and 1998, but not in AY 1996. If he has evidence that he performed more than 19 drills in AY 1996 or completed qualifying correspondence courses for drill points, he is welcome to submit it to the Board with a new application.

9. The applicant's Acceptance and Oath of Office dated August 15, 1998, shows

⁴ Medals and Awards Manual, Chap. 5.A.3.a.(8).

⁵ 10 U.S.C. § 12732.

that he was commissioned an ensign in the Reserve on that date. His SOCS properly reflects this date of rank.

10. The applicant alleged that he began serving on extended active duty (EAD) on August 15, 1998 (the date of his commissioning). The SOCS shows that he began serving on EAD on August 24, 1998. However, the email from the PPC states that “SEG 57” in the Coast Guard database shows that he began serving on EAD on November 1, 1998. The applicant’s OER, which was prepared by his chain of command at the MSU in Galveston in April 1999 for the evaluation period ending on March 31, 1999, shows that the applicant reported for active duty at the unit on August 15, 1998. The 32 days of “not observed” time shown on the OER are fully accounted for by the training courses that he took in December 1998 and February 1999, as shown on his DD 214. Unlike the SOCS, which was prepared in 2009, and the database, which has changed since 1998, the OER was prepared just a few months after the applicant began active duty and was prepared by his chain of command, who presumably knew what date he began active duty. Therefore, the Board finds that the preponderance of the evidence shows that he began serving on continuous active duty on August 15, 1998.

11. Reservists receive one point for each day of active duty. Therefore, while he was serving on continuous active duty from August 15, 1998, through August 15, 2003, the applicant also accumulated at least 50 points in his anniversary years ending on April 23 in 1999, 2000, 2001, 2002, 2003, and even 2004 although he did not remain in the Reserve that entire anniversary year. Therefore, those years were also satisfactory for retirement purposes.

12. The applicant’s Acceptance and Oath of Office dated June 16, 2003, shows that he was commissioned a lieutenant in the regular Coast Guard on that date. His SOCS properly reflects this date of rank, but apparently “SEG 57” in the database is erroneous in that it shows he was commissioned on July 10, 2003. Therefore, the database should be corrected to show that he was integrated into the regular Coast Guard on June 16, 2003.

13. The applicant’s SOCS shows that he remained in the “USCGR” from June 16, 2003, to May 15, 2006, but was also in “AOZ” status—i.e., a regular active duty commissioned officer. Because he accepted his commission in the regular Coast Guard on June 16, 2003, and remained in the regular Coast Guard until his discharge on May 15, 2006, the SOCS should be corrected to show that he was in the “USCG” during this period.

14. The applicant’s DD 214 dated May 15, 2006, contains many errors. First, it shows that he had served on continuous active duty as a member of the regular Coast Guard since April 24, 1995. In fact, he had served on continuous active duty only since August 15, 1998, and from that date until June 15, 2003, he was a Reserve officer serving on extended active duty. Therefore, the date of entry in block 12.a. is erroneous, and under Chapter 1.A. of COMDTINST M1900.4D, the applicant should have received two separate DD 214s, one covering his Reserve active duty from August 15, 1998, to June 15, 2003, and a second covering his regular active duty from June 16, 2003, to May 15, 2006. Moreover, block 12.c. is wrong because it shows that he had 11 years and 22 days of continuous active duty, when the period from August 15, 1998, through May 15, 2006, is 7 years, 9 months, and 1 day; block 12.d. is wrong because it shows that he had no prior active service, whereas he had performed 12 days of

ADT/REBI in 1995, 12 days of ADT in 1996, and 36 total days of ADT in 1997; and block 12.e. is wrong because it shows that he had no prior inactive service although under Chapter 1.E. of COMDTINST M1900.4D, block 12.e. is supposed to reflect all of his inactive duty time that was creditable for basic pay—i.e., his IDT time between August 14, 1995, and August 14, 1998. Finally, the date of the applicant's Reserve Good Conduct Award is wrong in that he received it on April 24, 1998, not 1999. Accordingly, the applicant's DD 214 dated May 15, 2006, should be corrected to reflect these facts. Although he should have received two DD 214s for his Reserve and regular active duty, requiring the Coast Guard to prepare two new DD 214s could easily result in new errors, and a remark concerning his period of active duty as a Reserve officer may be included in the "Remarks" section in block 18.

15. The Board notes that under Chapter 1.B.10. of COMDTINST M1900.4D, the applicant should not have received a DD 214 for the period from September 21 to October 10, 2008, because he was a reservist serving on active duty for less than 90 days. Moreover, the calculations of his prior active service time and prior inactive service time in blocks 12.d. and 12.e. are clearly erroneous. The DD 214 shows in block 12.d. that he had completed 7 years, 10 months, and 28 days of prior active service. However, by October 10, 2008, the applicant had served on continuous active duty for 7 years, 9 months, and 1 day from August 15, 1998, through May 15, 2006; 60 total days of REBI and ADT between August 14, 1995, and August 14, 1998; and according to the SOCS, 13 days of ADT in early April 2007 and 12 days of ADT in March 2008. In addition, in block 12.e., the DD 214 shows that he had 4 years, 1 month, and 19 days of prior inactive service. However, by October 10, 2008, the applicant had accumulated about 2 years and 11 months of inactive service creditable for pay purposes from August 14, 1995, through August 14, 1998, and had served almost 2 more years of inactive duty since his reenlistment on November 7, 2006. The Board also notes that block 2 erroneously shows that he was a member of the regular Coast Guard, and block 12.h. erroneously shows that his effective date of pay grade as an MST1 was October 29, 2002, which was his prior date of rank as a lieutenant. Therefore, this DD 214 must also be corrected in numerous ways.

16. Accordingly, relief should be granted by correcting the applicant's record in accordance with the above findings. Moreover, should these corrections result in a net debt owed by the Coast Guard to the applicant, he should receive that money, and should these corrections result in a net debt owed by the applicant to the Coast Guard, that debt shall be waived and canceled pursuant to Chapter 11.F. of the Pay Manual because any such erroneous payments clearly occurred through administrative error and there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the applicant.⁶

⁶ Chapter 11.F. of the Pay Manual states that a member or former member may submit a written request "for the cancellation of an indebtedness to the U.S. Government which resulted from erroneous payments of pay and allowances made to or on behalf of the member or former member. ... 10 USC 2774 gives the Secretary of Department of Homeland Security authority to effect waiver of claims for erroneous payments of pay and allowances ... when collection of the claim would be against equity and good conscience, and not in the best interest of the United States." Subparagraph 5.f. states that collection of erroneous payments is against equity and good conscience when "the erroneous payment occurred through administrative error and ... there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member or any other person having an interest in obtaining waiver of the claim. Any significant, unexplained increase in pay and allowances which would require a reasonable person to inquire concerning the correctness of the pay or allowances, ordinarily would preclude a waiver when the member fails to bring the matter to the attention of appropriate officials."

ORDER

The application of xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx, USCGR, for correction of his military record is granted as follows. The Coast Guard shall correct all of his military records, paper and electronic, to be consistent with the following facts:

1. He originally enlisted in the Reserve on April 24, 1995, and he was not a member of the Reserve and had no military obligation of any sort prior to that date. April 24, 1995, is his DIEMS and his pay entry base date, as well as the start of his first anniversary year (AY) as a reservist and thus his anniversary date until he was integrated into the regular Coast Guard on June 16, 2003.
2. He attended REBI from August 14 to 25, 1995, and these 12 days counted as his ADT for his anniversary year ending on April 23, 1996. Therefore, he received at least 46 total points in AY 1996. He also performed 12 days of ADT in AY 1997 and 36 total days of ADT in AY 1998 and thus earned satisfactory years for retirement purposes in AY 1997 and 1998 pursuant to 10 U.S.C. § 12732.
3. He was commissioned an ensign in the Reserve on August 15, 1998, and served on continuous active duty as a Reserve officer from August 15, 1998, through June 15, 2003, and thus also earned satisfactory years for retirement purposes in AY 1999, 2000, 2001, 2002, 2003, and 2004.
4. He was promoted to lieutenant on October 29, 2002, and accepted a commission in the regular active duty Coast Guard as a lieutenant on June 16, 2003. He served as a commissioned officer in the regular active duty Coast Guard from June 16, 2003, until his discharge on May 15, 2006. Following a break in service, he reenlisted in the Reserve as an MST1 on November 7, 2006.

Furthermore, the Coast Guard shall correct the dates and times in block 12 of his DD 214 dated May 15, 2006, to reflect his continuous active duty from August 15, 1998, to May 15, 2006, and to be consistent with the above four paragraphs of facts. In addition, the Coast Guard shall add a remark to block 18, "Remarks," to show that he was a Reserve officer on continuous active duty from August 15, 1998, to June 15, 2003, and shall correct the date of his receipt of the Reserve Good Conduct Medal to April 24, 1998.

The Coast Guard shall correct the DD 214 dated September 21, 2008, by making the dates and times in block 12 consistent with the facts above, including his date of pay grade as an MST1, and by changing block 2 to show that he is a member of the Reserve (USCGR).

The Coast Guard shall also correct his Reserve point statement to be consistent with the facts above.

[ORDER CONTINUES ON NEXT PAGE]

Finally, the Coast Guard shall remove the SOCS dated August 18, 2009, from his record and prepare a new SOCS for him consistent with the facts listed above.

If these corrections result in a net debt owed by the Coast Guard to the applicant, the Coast Guard shall pay him that amount, and if these corrections result in a net debt owed by the applicant to the Coast Guard, that debt shall be deemed waived and canceled pursuant to Chapter 11.F. of the Pay Manual.

Donna M. Bivona

Bruce D. Burkley

James E. McLeod